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Company is incorporated in State. On Date1, Company filed Form 2553, Election by a Small Business Corporation. At the time of its election, x shares of

Company were held in Trust. Trust made an election to be treated as a qualified subchapter S trust ("QSST"), but did not satisfy the QSST requirements. Company further represents that as of Date1, Trust qualified to be treated as an electing small business trust ("ESBT"). Due to inadvertence, no ESBT election was ever made by Trust. As such, Trust was an ineligible shareholder and Company's S corporation election was never valid.

Company filed Forms 8869, Qualified Subchapter S Subsidiary ("QSub") Election, for Sub1 and Sub2, effective Date1. Due to Company's invalid election, Sub1 and Sub2's QSub elections were never valid.

Company represents that there was no intent to make an invalid S corporation election and the invalid election was not motivated by tax avoidance or retroactive tax planning. For all taxable years, Company and Company's shareholders have filed federal tax returns consistent with Company qualifying as an S corporation. For all taxable years, Company has treated Sub1 and Sub2 as though valid QSub elections were in effect for federal tax purposes. In addition, Company and Company's shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f), including bringing Trust in compliance with the ESBT requirements for all periods during which Trust was incorrectly treated as a QSST.

LAW AND ANALYSIS

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(3)(B) provides the term "qualified subchapter S subsidiary" ("QSub") means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

Section 1361(c)(2)(A)(v) provides that ESBTs, as defined in § 1361(e), are eligible S corporation shareholders.

Section 1361(e)(1)(A) provides that except as provided in § 1361(e)(1), the term "electing small business trust" means any trust if, (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of § 170(c), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential

current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1362(f) provides that (1) If an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or was terminated under paragraph (2) or (3) of § 1362(d) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents, and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be during the period specified by the Secretary.

Section 1.1362-4(b) provides that for purposes of § 1.1362-4(a), the determination of whether a termination or invalid election was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination or invalid election was inadvertent. The fact that the terminating event or invalidity of the election was not reasonably within the control of the corporation and, in the case of a termination, was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination or invalidity of the election was inadvertent.

Section 1.1362-4(d) provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation or QSub during the period specified by the Commissioner. In the case of stock held by an ineligible shareholder that causes an inadvertent termination or invalid election for an S corporation under § 1362(f), the Commissioner may require the ineligible shareholder to be treated as a shareholder of the S corporation during the period the ineligible shareholder actually held stock in the corporation. Moreover, the Commissioner may

require protective adjustments that prevent the loss of any revenue due to the holding of stock by an ineligible shareholder (for example, a nonresident alien).

CONCLUSION

Based solely upon the representations made and the information submitted, we conclude that Company's S corporation election was not effective on Date1, due to Trust being an ineligible shareholder. We further conclude that the circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Company will be treated as an S corporation on and after Date1, unless Company's S corporation election is otherwise terminated under § 1362(d), and Sub1 and Sub2 will be treated as QSubs on and after Date1, unless Sub1 and Sub2 otherwise fail to qualify as QSubs under § 1361(b)(3)(B), and provided that the following conditions are met.

Within 60 days of the date of this letter, the trustee of Trust must file an ESBT election effective Date1 with the appropriate service center. A copy of this letter should be attached to the ESBT election. In addition, the trustee of Trust must make appropriate adjustments including filing amended tax returns, if any are required, for the tax years since Date1 to bring Trust in compliance with the ESBT requirements.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to whether Company otherwise meets the requirements to be an S corporation or whether Trust satisfies the requirements to be an ESBT.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Company's authorized representative.

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes